APPEAL NO. 032756
FILED DECEMBER 1, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 24, 2003. The hearing officer determined that the appellant's (claimant) date of maximum medical improvement (MMI) is March 13, 2003, and that his impairment rating (IR) is 0% as certified by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The claimant appeals, contending that his IR should be 10%. The respondent (carrier) asserts that sufficient evidence supports the hearing officer's decision.

DECISION

Affirmed.

It is undisputed that the claimant sustained a compensable lower back injury on _____. A referral doctor noted in March 2002 that the claimant had a resolved lumbar spine sprain. The Commission chose a designated doctor to determine MMI and IR. The designated doctor examined the claimant on March 13, 2003, and reviewed medical reports, including the October 2002 MRI. The designated doctor certified in a Report of Medical Evaluation (TWCC-69) that the claimant reached MMI on March 13, 2003, with a 0% IR. The designated doctor used the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). The designated doctor assessed the claimant's IR under Diagnosis-Related Estimate (DRE) Lumbosacral Category I, which provides for a 0% IR. The designated doctor noted in his report that the claimant's neurological examination was within normal limits. In May 2003, the Commission sent a letter from the claimant's treating doctor to the designated doctor, in which the treating doctor opined that the claimant's IR was between 5 and 7%. The designated doctor responded that his opinion remained unchanged.

Sections 408.122(c) and 408.125(c) provide that the report of the designated doctor has presumptive weight, and the Commission shall base its determinations of MMI and IR on the designated doctor's report unless the great weight of the other medical evidence is to the contrary. The hearing officer found that the presumptive weight afforded the opinion of the designated doctor was not overcome by the great weight of the other medical evidence, and concluded that the claimant reached MMI on March 13, 2003, with a 0% IR as reported by the designated doctor.

The claimant contends that he did not get to discuss his case with the ombudsman for at least 15 minutes prior to the CCH. We do not find merit in that complaint because the record reflects that the claimant agreed at the CCH that he had met with the ombudsman for at least 15 minutes (apparently they met twice) and that he

answered affirmatively when asked by the hearing officer if he was ready to proceed with the CCH with the assistance of the ombudsman. *See* Section 409.041(b)(5).

The parties orally agreed at the CCH that the claimant reached MMI on March 13, 2003, as reported by the designated doctor. The claimant asserts that he was only following the ombudsman's advice when he agreed to the MMI date and that he was not properly informed what the agreement would mean to his case. We note that the ombudsman provides assistance to an unrepresented claimant, but does not represent the claimant. The claimant himself answered affirmatively when the hearing officer asked whether the date of MMI was the date certified by the designated doctor, March 13, 2003, and also answered affirmatively when the hearing officer asked whether the only issue to be resolved was the IR. Based on what is in the CCH record, we find no basis for reversal of the hearing officer's determination on the date of MMI.

The claimant contends that the designated doctor's assignment of a 0% IR is wrong because he has bulging discs and because an electrodiagnostic study done in July 2003, which the designated doctor did not review because it was done after the Commission sent the treating doctor's letter to the designated doctor, gave an impression of a borderline abnormal study, suggestive of mild right S1 radiculopathy. As noted, the designated doctor reported that the claimant's neurological examination was normal. Given the evidence in this case, the hearing officer was not compelled to find that the great weight of the other medical evidence was contrary to the designated doctor's opinion simply because the claimant had a borderline abnormal electrodiagnostic study, nor do we think it was necessary to again seek clarification from the designated doctor. *See* Texas Workers' Compensation Commission Appeal No. 030308, decided March 26, 2003, regarding significant signs of radiculopathy under DRE Lumbosacral Category III.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Robert W. Potts
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Margaret L. Turner
Appeals Judge